

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DWAYNE WHITE,

Plaintiff,

v.

WESTCHESTER COUNTY; WARDEN
MOCCIO, in his individual and official
capacities; JOSEPH K. SPANO,
Westchester County Department of
Corrections Commissioner, in his individual
and official capacities; JOSEPH HALL,
Resolve to Stop the Violence Program
Supervisor, in his individual and official
capacities; and PAMELA SPENCER,
Solutions Program Supervisor, in her
individual and official capacities,
Defendants.

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ORDER

18 CV 12048 (VB)

Briccetti, J.:

Plaintiff, who is proceeding pro se and in forma pauperis, commenced this action by filing a complaint on December 19, 2018. (Doc. #2). At that time, plaintiff was incarcerated at the Westchester County Jail. (See id. at 1).

As the Court stated in its Order of Service dated January 25, 2019, it is plaintiff's responsibility to notify the Court in writing if his address changes, and the Court may dismiss the action if plaintiff fails to do so. (Doc. #6).

The January 25 Order of Service was mailed to plaintiff, along with an "Instructions for Litigants Who Do Not Have Attorneys" pamphlet and a blank "Notice of Change of Address" form. (Doc. #7). Like the January 25 Order of Service, the Instructions pamphlet also states it is plaintiff's responsibility to notify the Court in writing if his address changes, and the Court may dismiss the action if plaintiff fails to do so. (See id. at ECF 2).

On April 8, 2019, plaintiff submitted a Notice of Change of Address, stating his updated address at Downstate Correctional Facility in Fishkill, NY. (Doc. #17).

On April 18, 2019, plaintiff submitted a second Notice of Change of Address, stating his updated address at Franklin Correctional Facility in Malone, NY. (Doc. #18).

On November 12, 2019, the Court received notice that its October 25, 2019, Order deeming defendants Warden Moccio, Joseph Spano, and Westchester County's motion to dismiss unopposed (Doc. #40), which was mailed to plaintiff, was returned as undeliverable because plaintiff was released from custody. Information provided on DOCCS's website states plaintiff was released from DOCCS's custody on August 13, 2019.

Thus, by Order dated November 14, 2019, the Court ordered plaintiff to update the Court in writing by December 16, 2019, as to his current address. (Doc. #41). The November 14 Order warned plaintiff, in bold and underlined font, that if plaintiff failed to update his address, the Court may dismiss the case for failure to prosecute or comply with Court orders.

To date, plaintiff has failed to update his address or seek an extension of time in which to do so. In addition, on December 4, 2019, the Court received notice that its November 14 Order, mailed by the Court to plaintiff, was returned with the notation: "Undeliverable as addressed/released."

Accordingly, by January 21, 2020, plaintiff must update the Court in writing as to his current address. Failure to comply with this Order will result in dismissal of the action for failure to prosecute or comply with Court orders. Fed. R. Civ. P. 41(b).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk is directed to mail a copy of this Order to plaintiff at the address on the docket.

Dated: December 23, 2019
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge